



Comptroller General
of the United States

Washington, D.C. 20548

423113

Decision

Matter of: Acumen Engineering/Analysis, Inc.

File: B-260102

Date: May 11, 1995

Gordon C. Alling, Jr., for the protester.
Craig E. Hodge, Esq., and Richard R. Mobley, Esq.,
Department of the Army, for the agency.
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the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Agency reasonably downgraded proposal for a technical approach that was more cumbersome, would require more work by government personnel, and would impose higher energy costs on the government, where the agency's concern about these issues was indicated in the solicitation.

DECISION

Acumen Engineering/Analysis, Inc. protests the award of a contract to Mayfield Engineering under request for proposals (RFP) No. DAAK60-94-R-2048, issued by the Department of the Army. Acumen contends that the agency evaluated its proposal on the basis of criteria that were not identified in the solicitation and failed to conduct adequate discussions.

We deny the protest.

The RFP was issued by the Army's Soldier Systems Command for the design and fabrication of a latrine system to be used in support of rest and refit missions as well as in humanitarian and disaster relief situations. The RFP stated that the agency intended to award a cost-plus-fixed-fee contract based on an integrated assessment of technical, management, and cost aspects of the proposals. Section M of the RFP further stated that the technical factor would be worth approximately two times as much as management, and that cost would be given less weight than management.

The RFP set forth the rating scheme that the agency would use to evaluate technical and management proposals. Under that scheme, a rating of "very good" would be assigned where the proposal "translated the requirements into a clearly defined, well integrated design and engineering approach . . . (and) demonstrates an above average approach with a high probability of success with only a small degree of risk." The next lower rating, "fair," reflected a proposal with "an adequately developed design and engineering approach."

Five firms submitted proposals in response to the RFP. Three of those proposals were determined to be in the competitive range, including Acumen's and Mayfield's.¹ Mayfield's proposal was rated "very good," while Acumen's was rated "fair." While no part of the protester's proposal was found technically unacceptable, certain "disadvantages" were identified.

In particular, the evaluators had concerns arising from Acumen's choice of an expandable shelter for the latrines, as opposed to the alternative, a non-expandable shelter. The evaluators noted that, while expandable shelters had the potential to provide the benefit of additional room, Acumen did not propose to take advantage of that extra space by, for example, including additional latrines in its shelter. Acumen's proposal thus presented the disadvantages of expandable shelters--longer set-up time and greater set-up effort, greater risk of part breakage due to the larger number of moving parts, and higher equipment and energy costs associated with heating and cooling a larger area--without exploiting the potential advantages of those shelters.

In written discussion questions, the agency directed Acumen's attention to the concern about the choice of an expandable shelter. Specifically, the agency asked Acumen to "[e]xplain in detail the reasoning why the Expandable . . . Shelter was selected as the housing for the required latrine components as opposed to a standard container or non-expandable shelter."

Acumen responded to the discussion questions by presenting its reasons for choosing the expandable shelter, including the benefit of additional room. Specifically, Acumen stated that the firm had considered the use of a non-expandable shelter and concluded that it would be so cramped as to be unworkable and, in fact, unacceptable. Acumen's response

¹The third proposal in the competitive range is irrelevant to the protest and is therefore not discussed further.

did not indicate that the firm had considered any of the disadvantages of expandable shelters, such as the greater set-up effort and higher energy costs.

Upon completion of discussions, the agency directed offerors to submit best and final offers (BAFO). Acumen retained the expandable shelter in its BAFO, without addressing any of the potential disadvantages of such a shelter. The evaluators continued to have concern about Acumen's use of an expandable shelter; they disagreed with Acumen's conclusion that a non-expandable shelter would be unacceptably cramped. Accordingly, the evaluators decided that, despite certain improvements contained in the BAFO, Acumen's proposal continued to merit only a "fair" rating, while Mayfield's proposal retained its "very good" rating.

The source selection authority (SSA) reviewed the final technical evaluation as well as the cost analysis of each proposal, which indicated that the estimated cost of Acumen's proposal was approximately \$400,000 (roughly 10 percent) lower than that of Mayfield. On the basis of that review, the SSA selected Mayfield for award, notwithstanding Acumen's lower estimated cost. The source selection document highlighted the technical disadvantages associated with Acumen's proposal, particularly regarding the use of an expandable shelter.

In its protest, Acumen contends that the agency had a "predetermined" preference for a non-expandable shelter, despite the fact that the RFP indicated that either type shelter could be acceptable.² According to the protester, if it had been advised in the RFP or during discussions that the Army preferred a non-expandable shelter, it could have proposed one, and at a lower cost than the awardee (whose proposal was based on a non-expandable shelter).

The evaluation of technical proposals is a matter within the discretion of the contracting agency since that agency is responsible for defining its needs and the best method of accommodating them. Western Env'tl. Corp., B-258567, Jan. 30, 1995, 95-1 CPD ¶ 46. In reviewing an agency's technical evaluation, we will not reevaluate the proposals; instead, we will examine the record to ensure that the evaluation was reasonable and consistent with the RFP

²Although the parties disagree on several other minor evaluation issues, those issues need not be addressed here, since it is clear from the record, and undisputed by the parties, that the key concern underlying the "fair" rating assigned to Acumen's proposal arose from its reliance on the use of an expandable shelter.

evaluation criteria. Management Technical Servs., B-250834, Feb. 22, 1993, 93-1 CPD ¶ 304. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Robert Slye Elecs., Inc., B-243272, July 5, 1991, 91-2 CPD ¶ 28.

Here, the crux of the protest is Acumen's contention that the Army impermissibly preferred non-expandable shelters to expandable ones. Based on our review of the record, we conclude that this contention is factually unsupported. The Army evaluators recognized that an expandable shelter could be acceptable, and even preferable to a non-expandable one, since an expandable shelter had the potential to offer benefits associated with the greater interior space. In reviewing Acumen's specific proposal, however, the evaluators concluded that the offeror was not proposing to exploit the potential benefits of an expandable shelter, and would thus be burdening the agency with the disadvantages of such a shelter without providing any of the possible countervailing benefits.

The Army's analysis does not establish a per se preference for one type of shelter over another. Instead, the agency considered whether, whichever design was offered, the proposal offered benefits that would outweigh any inherent technical disadvantages.³ The Army's concerns about the cumbersomeness of Acumen's expandable shelter and associated set-up difficulties and higher energy costs appear reasonable and consistent with the RFP criteria. While Acumen points out that it is possible to set the expandable shelter up with only two people, the Army states that safety concerns and the complexity of the task make it advisable to use four people to do that work; in this regard, the agency notes that the RFP advises that the Army has concern about the number of people needed for set-up.

In addition, while Acumen contends that the RFP does not explicitly state that the agency will prefer a design using less energy, the RFP does set a maximum level of energy to be used and states that, during testing, the total power consumed would be tracked. In this context, we view the agency's preference for systems using less energy as a matter logically encompassed in, and related to, the stated evaluation criteria. See RAI, Inc.; The Endmark Corp., B-250663; et al., Feb. 16, 1993, 93-1 CPD ¶ 140.

³Acumen similarly weighed the advantages and disadvantages of the two types of shelters, since it explained during discussions that the allegedly cramped space of a non-expandable shelter had caused the firm to propose an expandable one.

Finally, Acumen contends that the Army failed to conduct meaningful discussions. In Acumen's view, the agency acted improperly by failing to advise the protester during discussions of its specific concerns about the disadvantages associated with Acumen's proposed use of an expandable shelter.

In negotiated procurements, agencies generally are required to conduct meaningful discussions with all competitive range offerors. See Specialized Technical Servs., Inc., B-247489.2, June 11, 1992, 92-1 CPD ¶ 510. While this requires agencies to advise offerors of proposal deficiencies and to afford them an opportunity to submit a revised proposal, it does not mean that agencies must conduct all-encompassing discussions; rather, agencies are only required to lead offerors into those areas of their proposals needing amplification, given the context of the procurement. Eagan, McAllister Assocs., Inc., B-231983, Oct. 28, 1988, 88-2 CPD ¶ 405.

Here, the Army explicitly asked Acumen during discussions to justify its choice of an expandable shelter rather than a non-expandable one. In the context of this procurement, that discussion question plainly indicated that the agency questioned whether the use of an expandable shelter, as proposed by Acumen, might entail disadvantages not addressed in the protester's proposal. The Army was under no legal obligation to "spoon feed" the offeror by spelling out the specific advantages and disadvantages of the two types of shelters. Medland Controls, Inc., B-255204; B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260. Under the circumstances, the discussions led the protester into the area of the agency's concern, and were therefore legally adequate.

The protest is denied.

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General Counsel